

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-003795

11/08/2010

JUDGE M. SCOTT MCCOY

CLERK OF THE COURT

L. Davis

Deputy

IN RE THE MATTER OF
JANET E BALLOR

WILLIAM A HARRELL

AND

STEVEN J BALLOR

RODGER A GOLSTON

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

Following Trial on October 29, 2010 regarding Petitioner/Wife's Petition for Dissolution filed on June 3, 2009, the Court took this matter under advisement. Having considered the evidence and argument presented, the Court now rules.

I. DISSOLUTION OF MARRIAGE

THE COURT FINDS that at least one of the parties has been domiciled in the State of Arizona for more than 90 days immediately preceding the filing of the Petition; that the conciliation provisions of A.R.S. § 25-381.09, and the domestic relations education provisions of A.R.S. §25-352 either do not apply or have been met; that the marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

To the extent it has jurisdiction to do so, the Court has considered and made provisions for maintenance and disposition of property, and, where applicable, support, custody and visitation.

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IT IS ORDERED that the marriage existing between the parties is dissolved, and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

II. CUSTODY AND PARENTING TIME

The Parties have the following minor children in common:

Name: Claire Ballor	DOB: September 10, 1993
Name: Sarah Ballor	DOB: December 31, 1998

THE COURT FINDS that the children lived in Arizona with a parent, or a person acting as a parent, for at least six consecutive months or more prior to the commencement of this action, or at least from the time of the children's birth until this action was commenced, and that Arizona is the home state of the children vested with jurisdiction to make a child custody determination pursuant to A.R.S. § 25-1031(A)(1).

THE COURT FURTHER FINDS that the parties have reached an agreement for child custody and parenting time pursuant to the Parenting Agreement signed on October 25, 2010 by Father and on October 29, 2010 by Mother, filed separately this date.

THE COURT FURTHER FINDS that the custody provisions of the Parenting Agreement are not unfair, are reasonable, and are in the children's best interests.

IT IS THEREFORE ORDERED that Father and Mother are awarded joint legal custody of Claire Ballor and Sarah Ballor.

IT IS FURTHER ORDERED adopting the parenting time provisions of the Parenting Agreement as the parenting time orders of the Court.

The parents may change the parenting time schedule by mutual agreement.

III. ADDITIONAL CUSTODY/PARENTING TIME ORDERS

1. Neither parent shall expose the children to any incidents of domestic violence or extreme or hostile conflict or language. Neither parent shall expose the children to derogatory comments about the other parent or the relatives or friends of the other parent. The parents shall neither argue nor insult each other in the presence of the children or allow a third party to do so. Neither parent shall frighten the children by saying things such as that the other

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parent is trying to take him/her away, the other parent does not love him/her, want to see him/her, or is interfering with visits.

2. The parents shall not discuss custody, parenting time or child support issues in the presence of or with the children. The parents shall ensure that the children are not exposed to any discussion of custody disputes or legal proceedings other than to assure the children that the parents are trying to work out appropriate arrangements so that the children can have frequent and regular access to both parents.

3. The parents shall not question the children about where they want to live. The parents shall not question the children about the personal life of the other parent. The parents shall not express to the children how angry they are at the other parent, how they doubt the trustworthiness of the other parent or how hurt or frustrated they are by the actions of the other parent.

4. The parents are encouraged to communicate by e-mail and/or facsimile. Except for minor questions or emergencies, the parents are to afford each other reasonable time to consider and respond to requests or inquiries. However, e-mail and/or facsimile communications should be responded to within 24 hours. If the parents do not have e-mail or fax available to them, telephonic communication is allowed.

5. Each parent is restrained from using or permitting others to use the children to convey oral or written messages between households. Communications should take place directly between adult household members and the children should be protected from involvement in adult issues, for example, changes in the parenting time schedule.

6. Neither parent shall treat the children, or allow the children to be treated by any third party in the home, in a different manner than they treat the other children in the home, simply because the children have a relationship with the other parent or spends time with the other parent.

7. The children shall have phone access to both parents at all times. The children shall be given privacy during phone calls and there shall be no interference with phone access.

8. Both parents shall be listed as emergency contacts on any such forms that require contact information such as, but not limited to, education, activities, childcare and/or medical providers.

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9. During exchanges, the parties shall make every effort to be polite and respectful to each other. Interaction between the parents shall be restricted to the orderly exchange of the children. The parents are not to use the exchanges of the children or other circumstances in which the children are present to share information with one another, make requests of one another, engage in negotiations, or related activities.

10. Pursuant to A.R.S. § 25-403.06, unless otherwise provided by Court order or law, on reasonable request, both parents are entitled to have equal access to documents and other information concerning the children's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of such records or from the other parent.

11. No petition to modify the existing Court orders regarding custody and parenting time shall be filed without the parties first attempting to resolve their dispute through mediation with their assigned parenting coordinator, private mediation, or Conciliation Services.

IV. CHILD SUPPORT ORDERS

THE COURT FINDS that the relevant financial factors required to be included, and the discretionary allowances and adjustments which the Court will allow, for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet filed separately this date which the Court hereby incorporates and adopts as its findings with respect to child support.

IT IS ORDERED that Father shall pay to Mother for child support the sum of \$15.12 per month, plus \$5.00 per month as and for the Clearinghouse Handling Fee for a total of \$20.12, payable through the Support Payment Clearinghouse on the 1st day of each month commencing November 1, 2010, by Order of Assignment.

IT IS FURTHER ORDERED approving and settling formal written Child Support Order signed by the Court on November 8, 2010 and filed (entered) by the Clerk on November 8, 2010.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107**. The payment should show the case number and/or ATLAS

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case number and the name of the party paying support and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

IT IS ORDERED that Father shall provide medical insurance for the benefit of the parties' minor children, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the children not covered by insurance shall be paid 50% by Father and 50% by Mother.

IT IS FURTHER ORDERED that the Court allocates the federal tax exemptions for the dependent children as follows:

Child's Name	Date of Birth	Parent Entitled To Deduction For Each Calendar Year	
		2010	2011
Claire	9/10/1993	Mother	Mother
Sarah	12/31/1998	Father	Father

For any years following those listed above while this Child Support Order remains in effect, the parties shall repeat the above pattern of claiming deductions for each child.

IT IS FURTHER ORDERED that if either party requests reimbursement from the other for any uncovered healthcare expenses for the children, the request together with the proof of payment shall be submitted to the other party within 30 days of the expense being incurred and reimbursement made within 30 days thereafter. Failure to submit a claim within a timely fashion waives the claim.

IT IS FURTHER ORDERED that every 24 months hereafter, the parties shall exchange financial information, including tax returns, spousal affidavits and earnings statements.

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V. ALLOCATION OF PROPERTY AND DEBT

Having weighed the evidence presented,

THE COURT FINDS the parties own the following certain real property and business interests that are community property, with the following respective values and liens:

<u>Property</u>	<u>Value</u>	<u>Debt</u>	<u>Equity</u>
Elmwood Property	\$325,000	\$180,000	\$145,000
Arroya Property	\$185,000	\$104,000	\$ 81,000
Sheridan Property	\$175,000	\$ 35,000	\$140,000
Camelback Property	\$ 60,000	\$ 80,000	\$ -20,000
Heritage Pewter LLC (64% Interest)	\$433,000	\$ 0	\$433,000
Heritage Metalworks Inc. (62% Interest)	\$ 48,000	\$ 0	\$ 48,000

In the exercise of the Court's discretion,

IT IS ORDERED awarding to Wife the Elmwood Property, the Arroya Property, and the Sheridan Property as her sole and separate property, subject to any liens or encumbrances thereon.

IT IS FURTHER ORDERED awarding to Husband as his sole and separate property, subject to any liens and encumbrances thereon, the interests in Heritage Pewter LLC and Heritage Metalworks Inc.

Because Husband has been awarded property with a net value of \$461,000, compared to Wife's property with a net value of \$366,000,

IT IS ORDERED that Husband shall pay to Wife an equalization payment of \$47,500 on or before January 15, 2011.

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Both parties credibly testified that certain personal property was acquired before marriage or by gift during the marriage. Therefore,

IT IS ORDERED confirming the antique dresser, buffet, desk and commode inherited from Wife's family as Wife's sole and separate property, subject to any liens or encumbrances thereon.

IT IS FURTHER ORDERED confirming the Colt .38, the Remington Speedmaster .22 and the Remington 12-gauge shotgun as Husband's sole and separate property, subject to any liens or encumbrances thereon.

The Court is at a loss regarding how to divide the community personal property. Wife's testimony was not credible on this subject, and the Court finds no other credible evidence on which to make an equitable division.

IT IS THEREFORE ORDERED that the parties shall mutually agree on an alternative selection method to divide the personal property, and parties shall complete the selection process on or before December 15, 2010.

IT IS FURTHER ORDERED that if the parties fail to complete the selection process by December 15, 2010, then all community personal property shall be sold in a commercially reasonable manner. The parties shall split such sales proceeds equally.

IT IS FURTHER ORDERED that the parties shall cause to be prepared and submitted to the Court a Qualified Domestic Relations Order to divide both Husband's and Wife's IRAs. The community portion of the accounts, as well as the cost of the QDRO preparation, shall be split equally.

IT IS FURTHER ORDERED awarding to each party any bank accounts in his/her own name.

IT IS FURTHER ORDERED that the parties shall equally divide any family photos, DVD's, and videos, or equally divide the cost of reproducing these.

IT IS FURTHER ORDERED that the parties shall split any cash value in Husband's life insurance policy.

Turning to community debts, Wife's request that Husband be required to pay the credit card debt is unreasonable. Therefore,

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IT IS ORDERED that each party shall pay half of, and indemnify and hold the other party harmless from, half of the debt owing to or on the GM Card, United Mileage Plus Card, Macy's, Target, and Dillard's.

IT IS FURTHER ORDERED that Wife shall pay, indemnify and hold Husband harmless from the debts associated with the Elmwood Property, the Sheridan Property and the Arroya Property.

VI. SPOUSAL MAINTENANCE

Wife requests an award of Spousal Maintenance. Under A.R.S. § 25-319 (A), a spouse seeking spousal maintenance must demonstrate that he or she either:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

Based upon the evidence presented,

THE COURT FINDS:

- Wife is 53 years old and in good health.
- Wife recently began working part time. She is earning less than minimum wage at present, while actively seeking work. According to her AFI, she also is receiving \$1,100 a month in rental income from the Sheridan and Arroya

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properties, which have been allocated to her in this decree. Her net income at present is approximately \$2,000 per month.

- Wife's reasonable monthly needs at present are \$2,500 per month.

THE COURT FURTHER FINDS:

- Wife lacks sufficient property, including property apportioned in the decree, to provide for her reasonable needs. She is therefore eligible for spousal maintenance.

A.R.S. § 25-319(B) controls the issues of amount and duration of Spousal Maintenance. The factors to be considered, and the Court's findings on those factors, follow:

- **The standard of living established during the marriage (A.R.S. § 25-319(1)).** The Court finds that the parties lived a somewhat affluent lifestyle for approximately the last 10 years of the marriage. Unfortunately, that lifestyle was sustained through borrowing against the parties' equity in Heritage Millworks and running personal expenses through the company. In short, the parties' lifestyle was unsustainable, and the entire family will have to adjust to a more modest and realistic lifestyle.
- **The duration of the marriage (A.R.S. § 25-319(2)).** The Court finds Husband and Wife were married for 22 years when the Petition for Dissolution was served.
- **The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance (A.R.S. § 25-319(3)).** The Court finds that Wife is 53 years old and in good physical and emotional health. She has not worked full time since the 1990s. She has only recently started looking for full-time work, and she earns close to minimum wage on a part-time basis. In the early 1990s, she earned \$30,000 to \$35,000 a year in retail store management, though she will likely need 2-3 years of less lucrative work before she returns to that level of earnings.
- **The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance (A.R.S. § 25-319(4)).** The Court finds that Husband earns approximately \$3,755 per

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month, netting approximately \$3,004 per month (after taxes of 25%).^[1] His reasonable needs are approximately \$2,250 per month. To the extent he pays spousal maintenance, he will receive tax benefits that amount to \$225 per month.

- **The comparative financial resources of the spouses, including their comparative earning abilities in the labor market (A.R.S. § 25-319(5)).** The Court finds that the parties have comparable financial resources. Husband's earning capacity is higher than that of Wife, at least over the next several years, as she works her way back to a management position.
- **The contribution of the spouse seeking maintenance to the earning ability of the other spouse (A.R.S. § 25-319(6)).** The Court finds that Wife did contribute to Husband's earning ability by working in the early stages of the marriage while Husband focused on building up the business and also by taking care of the home and children so he could focus on his career.
- **The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse (A.R.S. § 25-319(7)).** The Court finds Wife did not reduce her income or career opportunities for Husband's benefit.
- **The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children (A.R.S. § 25-319(8)).** The Court

^[1] The parties devoted considerable energy to this issue. Wife contends that Husband's income is understated because he/they charged thousands of dollars in personal expenses on company credit cards. Husband contends that those charges were business expenses and, to the extent there were personal expenses charged on company credit cards, they were "charged back" to him personally by the company against his equity in the company.

There is merit to both positions. Though Husband would be expected to have access to documentation of such "charge backs", none were in evidence at trial. The Court also notes, however, that Wife took an overly narrow view of legitimate business expenses. All told, the Court estimates that 30% of the expenses charged to company credit cards were personal in nature.

Husband's income is calculated as follows: \$2,598 per month (from his Affidavit of Financial Information) plus 30% of his 2008 (pre-petition) monthly company credit card charges (((\$46,280 x .30)/12 months = \$1,157 per month), which totals \$3,755 per month.

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finds that neither party will have the resources to contribute significantly to their children's educational costs.

- **The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently (A.R.S. § 25-319(9)).** The Court finds Wife recently began working part time. She is earning less than minimum wage at present, while actively seeking work. According to her AFI, she also is receiving \$1,100 a month in rental income from the Sheridan and Arroya properties, which have been allocated to her in this decree. Her net income at present is approximately \$2,000 per month. Her reasonable monthly needs at present are \$2,500 per month.
- **The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available (A.R.S. § 25-319(10)).** The Court finds Wife does not intend to seek, and does not require, additional education or training to find appropriate employment.
- **Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common (A.R.S. § 25-319(11)).** The Court finds no such expenditures or waste.
- **The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved (A.R.S. § 25-319(12)).** The Court finds insufficient evidence to make findings on this issue.
- **All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim (A.R.S. § 25-319(13)).** No evidence indicates that any such damages or judgments exist.

Having considered the evidence and all relevant factors, the Court notes that this was a marriage of long duration, and Wife contributed to the business and Husband's career. For the time being, she cannot meet her reasonable needs. Husband has the ability to contribute to meet her needs, but both must adjust to their current and necessarily more modest economic circumstances.

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IT IS ORDERED that Husband shall pay to Wife \$700 per month for spousal maintenance for a period of 48 months, and then \$350 per month for spousal maintenance for an additional 48 months; all payable through the Support Payment Clearinghouse on the 1st day of each month, commencing November 1, 2010, by Wage Assignment.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

VII. ADDITIONAL ORDERS

Under A.R.S. § 25-324,

THE COURT FINDS that the parties have similar resources, and both parties have been unreasonable to some extent. In the exercise of the Court's discretion,

IT IS THEREFORE ORDERED that each party shall bear his/her own attorneys' fees and costs, except that Husband shall contribute \$3,000 towards Wife's expert fees within 90 days of entry of this Decree.

Finally, at Wife's request,

IT IS ORDERED restoring her name to Janet Elaine Sousa.

FILED: Parenting Agreement, Child Support Worksheet, Exhibit Worksheet

IT IS ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. M. SCOTT McCOY

HON. M. SCOTT McCOY
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.